



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 28 2012

REPLY TO THE ATTENTION OF:

WC-15J

CERTIFIED MAIL 7009 1680 0000 7669 4698
RETURN RECEIPT REQUESTED

FOIA Exemption (b) (6)

Pinnacle Genetics, LLC
303 N Second Street
Carthage, Illinois 62321

Subject: Order for Compliance Pursuant to 33 U.S.C. §§ 1318 and 1319(a)
Docket No. V-W-12-AO-29

Dear FOIA Exemption (b) (6)

Protecting water quality is a high priority of the U. S. Environmental Protection Agency. Pollutants such as excessive nutrients and pathogens discharged to waterways from animal feeding operations contribute to poor water quality and impairment of uses of those waterways.

EPA inspected Pinnacle Genetics, LLC on March 22, 2012. During the inspection, we found violations of the Clean Water Act (CWA). Enclosed is the above-referenced Order for Compliance (Order). This Order requires you to immediately cease all unauthorized discharges and to construct the necessary facilities to comply with the CWA. This Order also requires Pinnacle Genetics, LLC to submit and follow a plan to return to compliance with its National Pollutant Discharge Elimination System permit.

Pinnacle Genetics, LLC must comply with this Order within the time periods specified in the Order. Failure to comply with the Order may subject Pinnacle Genetics, LLC to further enforcement action pursuant to Section 309 of the CWA.


Please be advised that neither the issuance of this Order by EPA nor compliance with its terms affects Pinnacle Genetics, LLC's obligation to comply with the CWA or any other Federal or State laws or regulations, nor does it preclude further enforcement action pursuant to Section 309 of the CWA for the violations cited herein or any other violations committed by Pinnacle Genetics, LLC.

Please send your written response to the addresses specified in the Order. Under the Order, Pinnacle Genetics, LLC may request an informal conference with EPA within 10 calendar days of receipt of this Order or submit written information to EPA within that same timeframe.

Assistance with constructing structures necessary to comply with this Order may be available through the Environmental Quality Incentives Program (EQIP). The Farm Security and Rural Investment Act of 2008 (Farm Bill) authorized the Natural Resources Conservation Service (NRCS) to provide a voluntary conservation program for farmers and ranchers that promotes agricultural production and environmental quality as compatible national goals. EQIP offers financial and technical help to assist eligible participants install or implement structural and management practices on eligible agricultural land. EQIP is a competitive program. In order to sign up for EQIP, the NRCS must determine that the applicant is an eligible producer and that the land is eligible. NRCS assistance is available at any USDA Service Center. EQIP sign-up information is available online at (www.il.nrcs.usda.gov/programs/eqip/).

Also enclosed is a copy of the report on the Concentrated Animal Feeding Operation Inspection conducted by EPA on March 22, 2012. If you have any questions concerning this matter, please contact Ben Atkinson of my staff at (312) 353-8243.

Sincerely,



Tinka G. Hyde
Director, Water Division

Enclosures

cc: Roger Callaway, IEPA
Eric Ackerman, Peoria Region, IEPA
FOIA Exemption (b) (6), Professional Swine Management, LLC

IN THE MATTER OF:

Respondent

DOCKET NO: V-W-12-AO-29

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to the waters of the United States except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Pursuant to 33 U.S.C. § 1342; 40 C.F.R. § 122.23(a) and (d) the owner or operator of a concentrated animal feeding operation (CAFO) which discharges any manure, litter, or process wastewater must seek coverage under an NPDES permit.
3. Pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), whenever the Administrator of EPA finds a person in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the Administrator of EPA may issue an order requiring that person to comply with the provisions of the CWA and the requirements of the permit.
4. Pursuant to 33 U.S.C. § 1318, EPA may require the owner or operator of any point source to establish and maintain records, annual reports; install, use or maintain monitoring equipment or methods; sample effluent; and provide other information as may be reasonably required.
5. EPA has approved the State of Illinois to issue NPDES permits under Section 402(b) of the CWA, 33 U.S.C. § 1342(b). The Illinois Environmental Protection Agency (IEPA) is the NPDES permitting authority for the State of Illinois. EPA retains the authority to enforce the CWA in Illinois.

II. DEFINITIONS

6. All terms used but not defined in this Order shall have the meanings provided to them in the CWA and EPA regulations promulgated under the CWA.
7. "Animal feeding operation" or "AFO" means, among other things, a lot or facility where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period and crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. § 122.23(b)(1).
8. "Concentrated animal feeding operation" or "CAFO" means, among other things an AFO that is defined as a Large CAFO or as a Medium CAFO under federal regulations. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. 40 C.F.R. § 122.23(b)(2).
9. "Discharge" or "discharge of a pollutant" means, among other things, any addition of any pollutant to navigable waters from any point source. *See* Sections 502(12), (16) of the CWA, 33 U.S.C. §§ 1362(12), 1362(16); 40 C.F.R. § 122.2.
10. "Effective Date" means that date when the Order becomes final as described in either Paragraph 113, 114, or 115.
11. "Land application area" means land under the control of the Respondent, whether that land is owned, rented, or leased, to which manure, litter, or process waste water from the production area is or may be applied. 40 C.F.R. § 122.23(b)(3).
12. "Large CAFO" means, among other things, an AFO that stables or confines as many as or more than 2,500 swine each weighing 55 pounds or more.
13. "Livestock management facility" means any AFO, livestock shelter or on-farm milking and accompanying milk-handling area. Livestock management facility includes the dead livestock handling area, egg wash area, egg processing area or raw material storage area. NPDES permit No. ILA010002, Special Condition 17.
14. "Livestock waste-handling facility" means individually or collectively those constructions or devices, except sewers, used for collecting, pumping, treating or disposing of livestock waste or for the recovery of by-products from such livestock waste. NPDES permit No. ILA010002, Special Condition 17.
15. "Navigable waters" means the waters of the United States. Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

16. "Person" means, among other things, an individual, association, partnership, or corporation. Section 502(5) of the CWA, 33 U.S.C. § 1362(5); 40 C.F.R. § 122.2.
17. "Point source" means, among other things, "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, . . . [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged." Section 502(14) of the CWA, 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.
18. "Pollutant" means, among other things, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, wrecked or discarded equipment, rock, sand, cellar dirt, and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.
19. "Site" means the facility or facilities owned or operated by Respondent located at 3131 North 600th Road, Colchester, Illinois, which includes the land application area, the production area, and adjacent land used in connection with the land application area and/or production area.
20. "Waters of the United States" means, in accordance with 40 C.F.R. § 122.2, among other things:
 - a. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce;
 - b. all interstate waters, including interstate wetlands;
 - c. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including any such waters:
 - (1) which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) which are or could be used for industrial purposes by industries in interstate commerce;
 - d. all impoundments of waters otherwise defined as waters of the United States under this definition;
 - e. tributaries of waters identified in Subparagraphs (a) through (d) of this definition; and
 - f. wetlands adjacent to the waters identified above.

III. FINDINGS

A. The Site

21. Respondent is a person.
22. Respondent owns or operates a swine facility at the site.
23. The site includes lots or facilities for which both of the following findings are true:
 - a. swine have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period; and
 - b. crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of that lot or facility.
24. The site is an AFO.
25. The site stables or confines as many as or more than 2,500 swine each weighing 55 pounds or more.
26. The site is a CAFO.
27. The site is a Large CAFO.
28. Professional Swine Management, LLC (PSM), operates the site.

B. The Respondent's NPDES Permit

29. In or about 2004, Respondent applied to IEPA for an NPDES permit.
30. On or about June 26, 2008, IEPA mailed a letter to PSM regarding Respondent's application for an NPDES permit. The letter stated that Respondent's application was incomplete and that, among other things, to make the application complete PSM should provide IEPA a stormwater management plan for the site.
31. On or about September 29, 2010, IEPA issued NPDES permit No. ILA010002 (the permit) to Respondent.
32. The permit became effective on or about September 29, 2010, and expires September 30, 2014.
33. The front page of the permit states that it authorizes the permittee to discharge as a result of precipitation events and in accordance with the permit's conditions.

34. Special Condition 3.a of the permit states that the permittee is prohibited from discharging livestock wastes (including feedlot runoff) to waters of the State, except overflow from livestock waste-handling facilities that is caused by a 25-year, 24-hour precipitation event where certain permit conditions are met.
35. Special Condition 3.b of the permit states that the permittee is authorized to discharge stormwater associated with a CAFO subject to 40 C.F.R. Part 412 from areas outside the livestock management facility or livestock waste-handling facility provided that the stormwater discharges are in compliance with a plan developed pursuant to Special Condition 6 of the permit.
36. Special Condition 6 of the permit states that livestock management facilities with a capacity equal to or greater than a Large CAFO shall implement a Stormwater Management Plan (stormwater plan) for minimizing the discharge of pollutants in stormwater runoff from certain facility areas, including immediate access roads used or traveled by carriers of raw material, waste material, by-products, or products used or created by the facility. Special condition 6 further states that the stormwater plan will include good housekeeping and preventative maintenance activities and monthly visual inspections. Special condition 6 further states that the stormwater plan is incorporated as a condition of the permit.
37. At all times relevant to this Order, Respondent had a stormwater plan.
38. At all times relevant to this Order, the stormwater plan stated that “the surrounding topography and the gravel allow the storm water to disperse away from individual buildings and the site. The excess storm water leaving the site will run through heavily vegetated areas and eventually drain towards Troublesome Creek.”
39. At all times relevant to this Order, the stormwater plan stated that “[f]acility roads, commodity storage areas, etc., will be inspected at least once a month.”
40. At all times relevant to this Order, under the heading, “Storm Water Best Management Practices”, the stormwater plan set forth practices including the following:
 - Permanent vegetation will be maintained across the facility.
 - Divert rain water away from areas where it could pond.
 - Maintain proper gravel cover and landscape gradient so that the water does not stand in access roads and around the production facility.
41. Special Condition 7.a of the permit states that the permittee shall submit annual reports to IEPA by March 15th of each year.
42. Special Condition 7.e of the permit states that the permittee shall inspect all livestock management facilities and livestock waste handling facilities weekly and will prepare and retain records of each inspection and corrective action.

43. Special Condition 7.j of the permit states that the permittee shall conduct weekly inspections of stormwater diversions, roof guttering, downspouts, channels, and other facilities that separate livestock waste from uncontaminated stormwater and will prepare and retain records of each inspection and corrective action.
44. Special Condition 7.k of the permit states that the permittee shall conduct daily inspections and maintain or repair water supply lines in the livestock management facilities, livestock waste handling facilities, raw materials storage area, areas where products, by-products or raw materials are set aside for disposal, and dead livestock management facilities and will prepare and retain records of each inspection and corrective action.

C. The EPA Investigation

45. On or about March 22, 2012, personnel from EPA conducted an inspection at the site (the Inspection). A copy of the EPA's inspection report (CWA Compliance Evaluation Inspection Report) is included as Attachment 1 to this Order.
46. On or about March 23, 2012, personnel from EPA met with PSM representatives to obtain additional information regarding Respondent. The information collected from that meeting is included in the CWA Compliance Evaluation Inspection Report.
47. On or about December 2, 2011, EPA sent PSM a request for information pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.
48. EPA received PSM's response on or about May 3, 2012.
49. On or about June 21, 2012, PSM representatives provided EPA additional information regarding site discharges.
50. On or about August 23, 2012, PSM representatives provided EPA additional information regarding the site's septic system.
51. On or about September 5, 2012, personnel from EPA conducted an inspection at the locations that PSM representatives had previously indicated were discharge points.
52. During the March 22, 2012 Inspection, EPA personnel observed standing water and flow paths near animal confinement buildings.
53. The flow paths described at paragraph 52, above, drained to tile riser surface inlets.
54. In the vicinity of fans blowing air and particles out of the animal confinement buildings referenced at paragraph 52, above, and in the vicinity of the standing water and flow paths referenced at paragraph 52, above, EPA observed areas of nutrient-burned vegetation.
55. During the March 22, 2012 Inspection, EPA personnel collected a sample from the standing water and flow paths referenced at paragraph 52, above.

56. The sample referenced at paragraph 55, above, contained elevated concentrations of nutrients and other pollutants.
57. The tile riser surface inlets referenced in paragraph 53 above, flow into perimeter tiles the outlet of which discharges to an unnamed tributary of Troublesome Creek (unnamed tributary).
58. During the September 5, 2012 inspection, EPA confirmed that the discharge locations provided by PSM representatives were on the unnamed tributary.
59. The unnamed tributary flows approximately 1.1 miles southwest to Troublesome Creek.
60. The unnamed tributary is a water of the United States.
61. Troublesome Creek is a tributary of the Illinois River.
62. Troublesome Creek is a perennial water.
63. Troublesome Creek is a water of the United States.
64. The Illinois River is a perennial water.
65. The Illinois River is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce.
66. The Illinois River is a navigable water.
67. The Illinois River is a water of the United States.
68. During the Inspection, EPA observed a pipe system that discharges pollutants including but not limited to human sewage from the site's sanitary sewer to the site's perimeter tile.
69. The perimeter tile referenced in paragraph 68, above, has an outlet that discharges to the unnamed tributary.
70. During the Inspection, EPA personnel collected a sample from the pipe system referenced at paragraph 68, above.
71. The sample referenced at paragraph 70, above, contained elevated concentrations of nutrients and other pollutants.
72. EPA has determined that the site has and will continue to discharge into the unnamed tributary, through a perimeter tile system described generally at paragraphs 52-71, above.
73. The site is a point source.

74. Each discharge described at paragraphs 52-73, above, is a discharge of a pollutant(s).
75. Each discharge described at paragraphs 52-67, above, is not in compliance with the stormwater plan.
76. Each discharge described at paragraphs 52-73, above, is not in compliance with the permit's conditions.
77. As a CAFO which discharges, the site is subject to the NPDES permitting requirements of Section 402 of the CWA, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.
78. By discharging sewage from the site without an NPDES permit as described at paragraphs 68-73, above, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
79. As of on or about March 22, 2012, no annual reports had been submitted to IEPA pursuant to Special Condition 7.a of the permit.
80. As of on or about March 23, 2012, Respondent had prepared and retained two pages of records documenting site inspections and corrective actions.
81. As of on or about March 22, 2012, no record of each inspection and corrective action had been prepared pursuant to Special Condition 7.e of the permit.
82. As of on or about March 22, 2012, no record of each inspection and corrective action had been prepared pursuant to Special Condition 7.j of the permit.
83. As of on or about March 22, 2012, no record of each inspection and corrective action had been prepared pursuant to Special Condition 7.k of the permit.
84. By being in noncompliance with one or more conditions of the permit, Respondent violated sections 301(a) and 308, 33 USC SS 1311(a) and 1308 and 40 C.F.R. § 122.41(a).

IV. COMPLIANCE REQUIREMENTS

A. Notification of Intent to Comply

85. Within 10 calendar days of the effective date of this Order, Respondent shall submit a written certification that it intends to comply with this Order.

B. Interim Measures

86. Upon the effective date of this Order, Respondent shall cease all unpermitted discharges from the site.

87. Upon the effective date of this Order, Respondent shall implement interim measures to eliminate all unpermitted discharges from the site.
88. Respondent shall operate and maintain the interim measures until Respondent completes construction and begins operation of all measures necessary to permanently cease unpermitted discharges.

C. NPDES Permit ILA010002

89. Within 30 calendar days of the effective date of this Order, Respondent shall submit to EPA a detailed plan (Permit Compliance Plan) which describes the actions Respondent has taken or will take to return to compliance with the permit. In the Permit Compliance Plan, Respondent shall:
 - a. Identify all monitoring, recordkeeping, and reporting which will be undertaken as required by the permit;
 - b. Include examples of each record keeping or reporting form identified in part a.
 - c. Identify all design costs, capital costs, and annual operation and maintenance costs associated with the controls required to cease violative discharges.
90. EPA will review the Permit Compliance Plan and submit written comments on the Permit Compliance Plan to Respondent.

D. Discharge Minimization and Notification

91. This Order does not authorize Respondent to discharge pollutants to waters of the United States at or from the site, and any such discharges are subject to enforcement. If, for any reason, Respondent discharges pollutants to waters of the United States, Respondent must visually monitor the discharge, and immediately notify the EPA by contacting Ben Atkinson by telephone at (312) 353-8243, or by fax at (312) 692-2144. Respondent must also immediately notify the IEPA at (217) 782-7860. In addition, Respondent must document the following information and submit a written report to the EPA and IEPA within five (5) days of becoming aware of the discharge, including:
 - a. The cause of the discharge, including an estimate of the discharge volume, an estimate of the flow rate if the discharge is continuing, and any analytical data;
 - b. the area receiving the discharge (*i.e.*, field, ditch, stream, or other description);
 - c. the specific location of the discharge;
 - d. the period of discharge, including exact begin and end dates and times, and if not corrected, the anticipated time the discharge is expected to continue;

- e. steps taken or to be taken to respond to, contain and mitigate the discharge;
- f. corrective action taken to prevent recurrences of the discharge; and
- g. apparent impacts to health or the environment resulting from the discharge, including, but not limited to, threats to surface water supplies, water supply wells, recreational areas, and water quality.

E. Record Retention and Reporting

- 92. Upon the effective date of this Order, Respondent shall maintain at the site and shall make available to EPA and IEPA personnel upon request a complete copy of the Nutrient Management Plan and copies of all records identified by the Nutrient Management Plan.
- 93. Interim Measures Report: Within 30 calendar days after the effective date of this Order, Respondent shall submit to EPA and IEPA the following documentation concerning the interim measures required by Section IV.B of this Order:
 - a. A detailed description of the interim measures;
 - b. documentation (*e.g.*, as-built diagrams, photographs, affidavits, etc.) showing that Respondent completed installation of the interim measures; and
 - c. an accounting of the costs incurred by Respondent to install, implement and maintain the interim measures.
- 94. Respondent shall submit an annual report to EPA and IEPA no later than March 15 of each calendar year following the effective date of the Order. In each annual report, Respondent shall include all information required by Special Condition 7.a of the permit.

V. SUBMITTALS

- 95. Any documents or notifications required by this Order to be submitted to EPA shall be mailed to the following address:

Water Enforcement Compliance Assurance Branch (WC-15J)
U.S EPA Region 5
Attn: Ben Atkinson
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

96. Any documents or notifications required by this Order to be submitted to IEPA shall be mailed to the following address:

Illinois Environmental Protection Agency
Bureau of Water
Attn: Roger Callaway
DWPC Compliance Section #19
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9274

97. All submittals made pursuant to this Order shall be returned under an authorized signature containing the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, including the possibility of fines and imprisonment for knowing violations.

98. If the signatory finds at any time after submittal of information that any portion of the submittal is false or incorrect, the signatory shall notify EPA immediately. Knowing submittal of false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), and 18 U.S.C. §§ 1001 and 1341.

Confidentiality of Submissions

99. You may not withhold information because you claim it is confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, you may assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order, as provided in 40 C.F.R. § 2.302(a)(2). The regulations provide that a person may assert a business confidentiality claim covering part or all of the information furnished to EPA when that person submits the information. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). Effluent data (as defined in 40 C.F.R. § 2.302(A)(2)) and information in NPDES permit applications is not entitled to confidential treatment. 40 C.F.R. § 122.7. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B.
100. If you do not assert a claim of business confidentiality when you submit the information, EPA may make the information available to the public without further notice.

101. EPA may use any information submitted in response to this Order in support of an administrative, civil or criminal action against Respondent.

VI. OPPORTUNITY FOR FURTHER AGENCY REVIEW

102. Respondent may seek further Agency review and to submit information to EPA concerning this Order.
103. Such information may include evidence (*i.e.*, documentation), arguments and comments regarding the legal and factual determinations on which the Order is based, its applicability to Respondent, the appropriateness of its terms or any other relevant and material issue.
104. If Respondent seeks further Agency review of this Order, it shall request a conference within within 10 calendar days of the date of signature of this Order by the Water Division Director. To request a conference, contact Ben Atkinson at (312) 353-8243, or Respondent's attorney may contact Kris Vezner, EPA Region 5, Office of Regional Counsel at (312) 886-6827.
- a. Any conference held pursuant to this Paragraph shall take place within 10 calendar days from the date of the request, unless the time period is extended by agreement of the parties. Respondent may appear in person, participate by telephone or be represented by an attorney or other representative.
 - b. Respondent is responsible for reducing all oral information it presents at the conference, including comments and arguments, to writing and submitting that document to EPA within five calendar days following the conference, unless the time period is extended by agreement of the parties.
 - c. Such a conference is not a formal evidentiary hearing and does not constitute a proceeding to challenge this Order. EPA will not make a formal transcript of the conference.
105. Regardless of whether Respondent requests a conference, Respondent may submit written information to EPA within 10 calendar days of the date of signature of this Order by the Water Division Director, unless the time period is extended by agreement of the parties. Respondent shall submit any written information according to the instructions in Section V of this Order.
106. EPA shall deem a failure to either request a conference or submit written information within 10 calendar days of the date of signature of this Order by the Water Division Director as a waiver of the opportunity for further Agency review.

107. EPA shall consider all relevant and material written information submitted by Respondent pursuant to this Section and determine that: (1) this Order should become final as originally issued; (2) this Order should be modified; or (3) this Order should be withdrawn.
108. If EPA determines that this Order should become final as originally issued or should be modified, then EPA shall address the material and relevant information submitted by Respondent in a responsiveness summary.
 - a. All written information submitted by Respondent and EPA's responsiveness summary shall be included in the administrative record supporting this Order.
 - b. The administrative record shall be available for public review under the Freedom of Information Act.
109. If EPA determines that this Order should become final as originally issued, EPA will notify Respondent of that decision in writing and shall provide Respondent with a copy of the responsiveness summary.
110. If EPA determines that this Order should be modified, EPA will modify the Order and issue a modified order to Respondent and shall provide Respondent with a copy of the responsiveness summary.
111. If EPA determines that this Order should be withdrawn, EPA will provide Respondent with written notice of the withdrawal of this Order.
112. No modification or withdrawal of this Order shall be effective unless and until it is issued in writing by EPA.

VII. EFFECTIVE DATE

113. If Respondent does not request a conference or submit written information pursuant to this Section, this Order shall become final and effective 15 calendar days after its date of signature by the Water Division Director.
114. If EPA determines this Order should become final as originally issued, this Order shall become final and effective seven calendar days after the date of EPA's signature of the written notification to Respondent of that determination.
115. If EPA modifies this Order, the modified order shall become final and effective seven calendar days after the date of EPA's signature of the modified Order.

VIII. GENERAL PROVISIONS

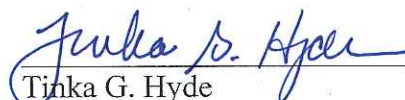
116. This Order is not a permit under the CWA, and does not waive or modify Respondent's ongoing obligation and responsibility to ascertain and comply with all other applicable federal, State or local laws, regulations, ordinances, permits or licenses.
117. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order, any other violation of the CWA, and to enforce this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited herein, for any other violations of the CWA committed by Respondent, or to enforce this Order.
118. Administrative, Civil and Criminal Enforcement
- The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, EPA may take one or more of the following actions:
- a. assess civil administrative penalties under 33 U.S.C. § 1319(g) and 40 C.F.R. Part 19 of \$11,000 per day for each violation that occurred after March 15, 2004 through January 12, 2009 and \$16,000 per day for each violation that occurred after January 12, 2009. An administrative penalty action may total up to \$177,500 for actions filed after January 12, 2009;
 - b. seek civil injunctive relief and penalties for violations under 33 U.S.C. § 1319(b) and 40 C.F.R. Part 19. EPA may seek civil judicial penalties of \$32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009, and may seek civil judicial penalties of \$37,500 per day for each violation that occurs after January 12, 2009; or
 - c. seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).
119. Respondent may seek federal judicial review of the final Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states scope of such review.
120. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

IX. CERTIFICATION OF COMPLETION

121. Within 30 days after Respondent concludes that it has complied with all requirements of this Order, Respondent shall submit to EPA a written certification of completion describing all actions taken to comply with all requirements of this Order.
122. After receipt and review of Respondent's certification of completion submitted pursuant to Paragraph 121, EPA shall notify Respondent whether all requirements of this Order have been satisfied.
123. This Order shall be terminated when EPA notifies Respondent that Respondent has complied with all requirements of this Order.

Date:

Sept. 28, 2012


Tinka G. Hyde
Director, Water Division

**CWA COMPLIANCE EVALUATION INSPECTION REPORT
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5**

Purpose:

Compliance Evaluation Inspection

Facility:

Pinnacle Genetics, LLC
3131 600th Road
Colchester, IL 62326

NPDES Permit Number:

ILA010002

Date of Inspection:

March 22 and 23, 2012

EPA Representatives:

Cheryl Burdett, CAFO Program Manager
Ben Atkinson, Agronomist

312-886-1463

312-353-8243

State Representatives:

None

Facility Representatives:

FOIA Exemption (b) (6) Professional Swine Management Employee,

Nutritionist/Commodity Merchandiser

FOIA Exemption (b) (6)

FOIA Exemption (b) (6), Professional Swine Management Employee,

Soil & Water Conservation Manager

FOIA Exemption (b) (6)

Report Prepared by:

Ben Atkinson, Agronomist

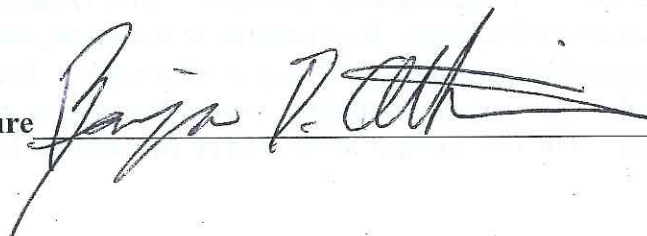
atkinson.ben@epa.gov

312-353-8243

Report Date:

September 27, 2012

Inspector Signature

A handwritten signature in black ink, appearing to read "Ben Atkinson", is written over a horizontal line.

BACKGROUND

The purpose of this report is to describe, evaluate, and document Pinnacle Genetics, LLC's compliance with the Clean Water Act (CWA) at its Colchester, Illinois facility on March 22, 2012.

Pinnacle Genetics, LLC (Pinnacle) is a swine farrowing facility located in McDonough County, Illinois. It is owned by Pinnacle Genetics, LLC and operated by employees of Professional Swine Management (PSM). Pinnacle is considered a large swine Concentrated Animal Feeding Operation (CAFO) due to the number of hogs greater than 55 pounds confined and maintained on the facility. It was expanded to its current size in 2005. Pinnacle has a General National Pollutant Discharge Elimination System (NPDES) permit. The permit, number ILA010002, was issued on October 20, 2009, became effective on September 29, 2010, and expires September 30, 2014. The permit authorized Pinnacle to discharge as a result of precipitation events and in accordance with the conditions and attachments of the permit.

Facility representatives at Pinnacle stated that it has 585 sows and litters and 3,486 sows. It was stated that the maximum number of animals at the facility was approximately 3,600. [FOIA Exemption (b) (6)] is the Certified Livestock Manager for Pinnacle.

Pinnacle is located 0.2 miles from an unnamed tributary which flows approximately 1.1 miles southwest to the perennial Troublesome Creek. Troublesome Creek has been assessed and is on the list 303d list of impaired waters. It is impaired for total phosphorus. Troublesome Creek flows to the Illinois River.

SITE INSPECTION

EPA arrived at Pinnacle at 10:09 A.M. on March 22, 2012. The temperature was approximately 63°F and there was a light rain. When EPA arrived at Pinnacle there was a biosecurity sign that required calling a phone number identified on the sign prior to entry. EPA called the phone number on the sign at the entrance to Pinnacle and spoke with [FOIA Exemption (b) (6)] and then with [FOIA Exemption (b) (6)] at Professional Swine Management (PSM). [FOIA Exemption (b) (6)] informed us that someone would meet us at Pinnacle in approximately an hour and asked that we have our car washed prior to the inspection. EPA left Pinnacle, washed the vehicle, and returned to the Pinnacle entrance at approximately 11:15 A.M. At that time, EPA met with PSM representatives [FOIA Exemption (b) (6)] and [FOIA Exemption (b) (6)]. EPA presented credentials, donned the disposable boots provided by the PSM representatives and then followed the PSM representatives to the Pinnacle facility to begin a records review. Upon arrival at Pinnacle facility, a PSM representative entered the facility to retrieve the Comprehensive Nutrient Management Plan (CNMP) and associated records. EPA began the records review, but decided that on account of the rain and the lack of a covered area in which to work, that the facility inspection would proceed first and the records inspection would be concluded following the facility inspection.

According to the PSM representatives and the CNMP, Pinnacle has two gestation buildings and two farrowing buildings. It has one 10 foot deep pit under each gestation building. The farrowing buildings have shallow pits which use a 2 foot pull plug system to drain to the pits below the gestation buildings. Perimeter tiles run along the footings of the gestation buildings. Tile riser surface inlets located between the buildings collect

storm water from between the buildings. These tile riser surface inlets tie into the perimeter tiles. The exact number and location of the outlets for the perimeter tiles was not able to be identified at the time of the inspection. The capacity of the two pits below the gestation buildings is a combined 5,197,541 gallons which represents storage for 619 days. No records of manure levels in the pits were provided to the EPA. The buildings are washed out after the removal of the piglets. The wash water is provided by well water and falls to the under-barn pits to be processed with the manure. Manure is injected using a drag hose system when land applied. Pinnacle has 850 available acres for land application.

The hogs utilize nipple waterers for drinking water. Swamp coolers are used to cool the hogs in warm weather. Spilled drinking water falls to the under-barn pits and is processed with the manure. Mortalities are composted at the onsite Compost Building. The animals are kept in total confinement and thus are never allowed into pasture or to access waters of the United States.

Pinnacle has a CNMP which was developed by Frank and West, Inc. The CNMP was put into service on April 26, 2010 and was for operations through 2014. No copies of the onsite CNMP were made. The sections reviewed and identified as present in the CNMP onsite were:

- Description of operation and maintenance of manure storage facilities
- Mortality management
- Clean water diversion
- Direct contact prevention
- Chemical management
- Emergency action plan
- Land treatment practices including soil type, crop type, yield goals, soil loss T value and RUSLE2 index

Walkthrough of the Facility

EPA began the walkthrough of the facility on southeast corner of the facility. An orange tile riser surface inlet was noted southeast of the facility's office building. The PSM representatives were unable to identify the outlet for the tile at the time of the inspection. FOIA Exemption (b) (6) of PSM later provided a map showing that this tile riser outlets to the ravine located to the east of the facility. (Attachment B)



IMGP0465: Tile riser surface inlet southeast of farrowing buildings. Facing: South
Date/Time: 03/22/12 12:18 P.M.

EPA walked west on the south side of the farrowing buildings. The nine bay compost facility is located south of the farrowing buildings. The compost facility was elevated and surrounded by a gravel berm. A dark leachate appeared to seep from the base of the gravel berm in several locations. The vegetation surrounding the seeping leachate appeared dead. The leachate flow pathway disappeared into the surrounding vegetation.



IMGP0454: Mortality compost facility south of farrowing buildings.
Facing: Southwest Date/Time: 03/22/12 11:59 A.M.



IMGP0456: Mortality compost facility south of farrowing buildings. Seeping leachate.
Facing: Southeast Date/Time: 03/22/12 12:01 P.M.



IMGP0457: Mortality compost facility south of farrowing buildings. Seeping leachate.
Facing: Northeast Date/Time: 03/22/12 12:01 P.M.

EPA noted a vertical black corrugated pipe nearly flush with the ground surface adjacent to a blue pipe protruding from the ground west of the mortality composting facility. At the time of the inspection, a whiteish soapy looking liquid was flowing into the vertical black corrugated pipe through an inlet and out of the black pipe through an outlet set lower in the pipe. At the time of the inspection, the PSM representatives were unable identify the source of the incoming liquid or the location of the final outlet of the pipe. It was determined that samples of the liquid would be taken upon the conclusion of the walkthrough.



IMGP0462: Blue pipe west of mortality facility adjacent to vertical black corrugated pipe.

Facing: South Date/Time: 03/22/12 12:08 P.M.



IMGP0460: Vertical black corrugated pipe with whitish soapy looking liquid.

Facing: Down Date/Time: 03/22/12 12:07 P.M.

An orange tile riser surface inlet was noted in a depression west of the mortality composting facility, south of the farrowing buildings. At the time of the inspection, the PSM employees were unable to identify the location of the tile connected to the riser or the location of the outlet.



IMGP0458: Tile riser surface inlet west of mortality compost facility and south of farrowing building shown here below the arrow.
Facing: West Date/Time: 03/22/12 12:02 P.M.



IMGP0459: Tile riser surface inlet west of mortality compost facility and south of farrowing building.
Facing: South Date/Time: 03/22/12 12:04 P.M.

EPA continued to walk west on the southern side of the farrowing buildings. An orange tile riser surface inlet was noted on the southern edge of the gravel drive. PSM representatives stated that this riser was part of the perimeter tile. EPA walked southwest of the facility towards the unnamed tributary which flows approximately 1.1 miles

southwest to the perennial Troublesome Creek in an attempt to locate an outlet for any of the tiles. The outlet of the perimeter tiles could not be identified. Risers for the perimeter tiles were located at the southwest corner of the farrowing buildings.



IMGP0467: Southern side of farrowing buildings with orange tile riser surface inlet.
Facing: East Date/Time: 03/22/12 12:23 P.M.



IMGP0468: Southwest corner of farrowing buildings showing perimeter tile risers.
Facing: Northeast Date/Time: 03/22/12 12:24 P.M.

EPA walked north on the western side of the facility. EPA observed that there appeared to be areas between the farrowing buildings and the southern gestation building where the vegetation surrounding the exterior fans was dead. The storm water from between the southern gestations and farrowing buildings was directed to a tile riser surface inlet that was believed to be connected to the perimeter tile.



MGP0471: Between the farrowing buildings and the southern gestation building. Nutrient burned vegetation outside fan.

Facing: East Date/Time: 03/22/12 12:30 P.M.



MGP0471: Between the farrowing buildings and the southern gestation building. Tile risers and surface inlet.

Facing: West Date/Time: 03/22/12 12:30 P.M.

EPA noted that some areas outside of the fans on the west side of the south gestation building were only sparsely vegetated. The storm water from these areas was directed to the tile riser surface inlets which were thought to tie into the perimeter tile.



MGP0473: West of the southern gestation building. Denuded areas outside of fans.
Facing: North Date/Time: 03/22/12 12:30 P.M.

EPA observed that the area between the northern and southern gestation buildings were somewhat denuded of vegetation. The areas outside of the fans was also lacking in vegetation. The storm water from these areas was directed to the tile risers that were thought to connect to the perimeter tile. EPA observed standing water and flow pathways leading to the tile risers.



MGP0474: Between the northern and southern gestation buildings. Denuded and nutrient burned areas. Tile riser surface inlet.
Facing: East Date/Time: 03/22/12 12:31 P.M.



MGP0474: West of the northern gestation building. Denuded and nutrient burned areas draining to tile riser surface inlet.

Facing: South Date/Time: 03/22/12 12:32 P.M.

EPA walked north and observed a tile riser northwest of the northern gestation building. This riser was thought to be tied to the perimeter tile. The outlet of the tile was not known. EPA walked east on the north side of the northern building.



MGP0476: Northwest of the northern gestation building.

Facing: South Date/Time: 03/22/12 12:35 P.M.



MGP0477: Tile riser northwest of the northern gestation building.
Facing: South Date/Time: 03/22/12 12:38 P.M.



MGP0478: North of the northern gestation building.
Facing: East Date/Time: 03/22/12 12:39 P.M.

EPA walked east to the northeastern corner of the northern gestation building. EPA observed feed storage bins on concrete pads. The area around the bins was clean and free of spilled feed. EPA also observed a tile riser surface inlet north of the feed

bins. The PSM representatives were unable to identify what the tile drained or where it outlets.



IMGP00479: Northeast of northern gestation building. Feed bins and tile riser surface inlet.

Facing: South

Date/Time: 03/22/12 12:43 P.M.

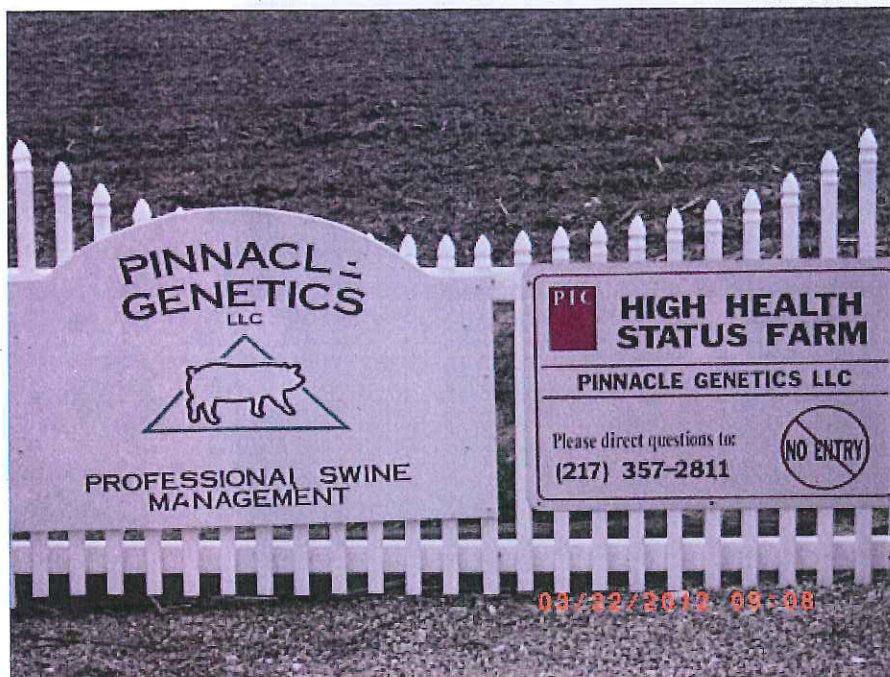
EPA walked south on the east side of the facility to a second set of feed bins. These feed bins were located between the northern and southern gestation buildings. They were located on a recessed concrete pad with drain pipe to remove precipitation. EPA observed spilled feed on the concrete pad mixing with the precipitation. This process waste water was flowing into the drain pipe. The outlet of this pipe was not able to be identified.



MGP0480: Northeast of northern gestation building.
Facing: South Date/Time: 03/22/12 12:44 P.M.



MGP0478: Feed bins on recessed concrete pad northeast of southern gestation building.
Drain at upper right. Spilled feed under bins.
Facing: North Date/Time: 03/22/12 12:51 P.M.



IMGP0348: Pinnacle Genetics, LLC sign at entrance. A Professional Swine Management Facility. Facing: South Date/Time: 03/22/12 10:08 A.M.

EPA informed the PSM representatives that they would be taking samples from the vertical black pipe west of the mortality compost facility and from the water next to the tile riser surface inlet between the northern and southern gestation buildings. EPA collected those samples and provided split samples to the PSM representatives. EPA walked back to the Pinnacle entrance to complete the records review. EPA reviewed the records that were kept onsite and available. It was determined that there were records kept by PSM at their Carthage office that would need to be collected. EPA performed a closing conference with **FOIA Exemption (b) (6)** EPA removed the disposable boots and disposed of them in a waste container at the Pinnacle Genetics entrance.



IMGP0348: Split samples taken at black pipe west of mortality composting facility
Facing: West Date/Time: 03/22/12 1:34 P.M.



IMGP0348: Split samples taken at tile riser surface inlet west of gestation barns
Facing: East Date/Time: 03/22/12 1:45 P.M.

On March 23, 2012, EPA inspectors met with PSM representative [FOIA Exemption (b) (6)] and [FOIA Exemption (b) (6)] at the PSM office located at 303 North 2nd Street Carthage, Illinois. This meeting was requested by EPA to obtain any documents or records maintained by PSM, as required by their permit, which were not kept with the CNMP. At this meeting [FOIA Exemption (b) (6)] and [FOIA Exemption (b) (6)] provided EPA with 2010-2011 Manure Analysis, copies of the

most recent soil tests, a copy of [FOIA Exemption (b) (6)] Certified Livestock Manager Certificate, the field application history dating back to 2007 and farm inspection records for July to September of an unspecified year. Annual reports, records and scope of weekly inspection, and records of daily inspections were not provided.

Additional information was provided by [FOIA Exemption (b) (6)] of PSM on June 21, 2012 regarding the locations of the outlet for the various tiles around the facility and the source of the liquid in the black pipe west of the mortality management building. The tile riser surface inlets tie into the perimeter tiles around the footings of the gestation building and outlet to the unnamed tributary of Troublesome Creek which flows south of the facility. The black pipe west of the mortality management facility is a drop box for the facility's septic. The sewage is treated by an aerobic treatment unit. This also ties into the perimeter tiles and outlets to the unnamed tributary. The location of these outlets is shown on the map provided by PSM and is included as attachment B.

A follow up reconnaissance inspection of the outlet locations was conducted by EPA on September 5, 2012. Ben Atkinson and Don Schwer obtained permission from [FOIA Exemption (b) (6)] the owner of the land on which the outlets are located, to inspect the area along the tributary to Troublesome Creek. The outlets were identified in approximately the location shown on the map Provided by PSM. One pipe with a small discharge (dripping) was located at the western outlet location identified by PSM. Two discharging pipes, one white and one blue, were observed at the eastern outlet location.



IMGP1002: Western outlet on the unnamed tributary to Troublesome Creek
Facing: Northwest Date/Time: 09/05/12 2:39 P.M.



IMGP1013: Eastern outlets on the unnamed tributary to Troublesome Creek
Facing: Northwest Date/Time: 09/05/12 2:48 P.M.



IMGP1016: Blue discharge pipe at eastern outlet on the unnamed tributary to Troublesome Creek
Facing: North Date/Time: 09/05/12 2:51 P.M.



IMGP1017: White discharging pipe at eastern outlet on the unnamed tributary to Troublesome Creek
Facing: Northeast Date/Time: 09/05/12 2:52 P.M.

A septic smell was noted around the eastern outlets. A slimy white substance was found in the tributary around the eastern outlets. Samples were taken from the discharging pipes. Sample results are not available at the time of this report.

POTENTIAL VIOLATIONS

According to Section 301(a) of the Clean Water Act, it is unlawful to discharge any pollutants to waters of the United States without an NPDES permit. EPA observed foamy water (later identified as sewage) flowing through the vertical black pipe adjacent to the mortality composting facility. Additionally, EPA observed process wastewater and industrial stormwater flow paths and puddles near and leading to the tile riser surface inlets between the gestation buildings. The tile riser surface inlets and sewage discharge to the unnamed tributary to Troublesome Creek. An NPDES permit (ILA010002) was issued to Pinnacle Genetics, LLC on October 20, 2009, became effective on that same date and expires on September 30, 2014.

EPA observed the following

- 1) Water carrying pollutants from between the most northern building and the central building (identified as the North Gestation and South Gestation buildings in its CWA Compliance Evaluation Inspection Report), flowed to tile riser surface inlets which flow to the perimeter drain tiles which discharge to the unnamed tributary of Troublesome Creek.

- 2) Sewage from the facility flowed through an open vertical black corrugated pipe which flows into the perimeter drain tile outlet pipe which discharges to the unnamed tributary.
- 3) The facility was not maintained as required by the Storm Water Management Plan located in the CNMP and incorporated in the NPDES permit. Specifically, the Storm Water Management Plan was not followed in the following ways:
 - a. The site was to be operated such that “the surrounding topography and the gravel allow the storm water to disperse away from individual buildings and the site. The excess storm water leaving the site will run through heavily vegetated areas and eventually drain towards Troublesome Creek.” The tile riser surface inlets which flow to the perimeter tiles prevented the storm water from leaving the site as intended.
 - b. The Storm Water Best Management Practices included in the Storm Water Management Plan include “Permanent vegetation will be maintained across the facility”, “Maintain proper gravel cover and landscape gradient so that the water does not stand in access roads and around the production facility.” The site was denuded of vegetation in areas and had standing water in flow paths around the production facility.
- 4) The facility failed to maintain the required documents as required in the NPDES permit, under SPECIAL CONDITION 7: Monitoring, Recordkeeping, and Reporting Requirements:
 - a. Item (e), the permittee inspect all livestock management facilities and livestock waste handling facilities weekly and to prepare and retain records of each inspection and corrective action.
 - b. Item (j), the permittee to conduct weekly inspections of stormwater diversions, roof guttering, downspouts, channels, and other facilities that separate livestock waste from uncontaminated stormwater and to prepare and retain records of each inspection and corrective action.
 - c. Item (k), the permittee to conduct daily inspections and maintain or repair water supply lines in the livestock management facilities, livestock waste handling facilities, raw materials storage areas, areas where products, by-products or raw materials are set aside for disposal, and dead livestock management facilities and to prepare and retain records of each inspection and corrective action.

LIST OF ATTACHMENTS

- A) Aerial photograph of Pinnacle Genetics, LLC with buildings, waterways, sampling points, and approximate tile riser locations.
- B) Map provided by PSM showing location of perimeter tiles and outlets.

SAMPLING RESULTS								
Sample ID	Sample Description (all liquid samples)	Biochemical Oxygen Demand (mg/L)	Total Kjeldahl Nitrogen (mg/L)	Nitrate- Nitrite N (mg/L)	Ammonia as N (mg/L)	Total Phosphorus (mg/L)	Total Dissolved Solids (mg/L)	Total Suspended Solids (mg/L)
	<i>Typical limits</i>			<i>0.1 *</i>	<i>15</i>	<i>.05</i>	<i>1000</i>	
S01	Vertical Black Pipe	160	42	.05	28.3	7.26	944	15
S02	Tile Riser Surface Inlet	42	17.7	27.4	3.30	2.48	574	244
B01	Pinnacle (Field Blank)	2	U	.04	U	U	U	U

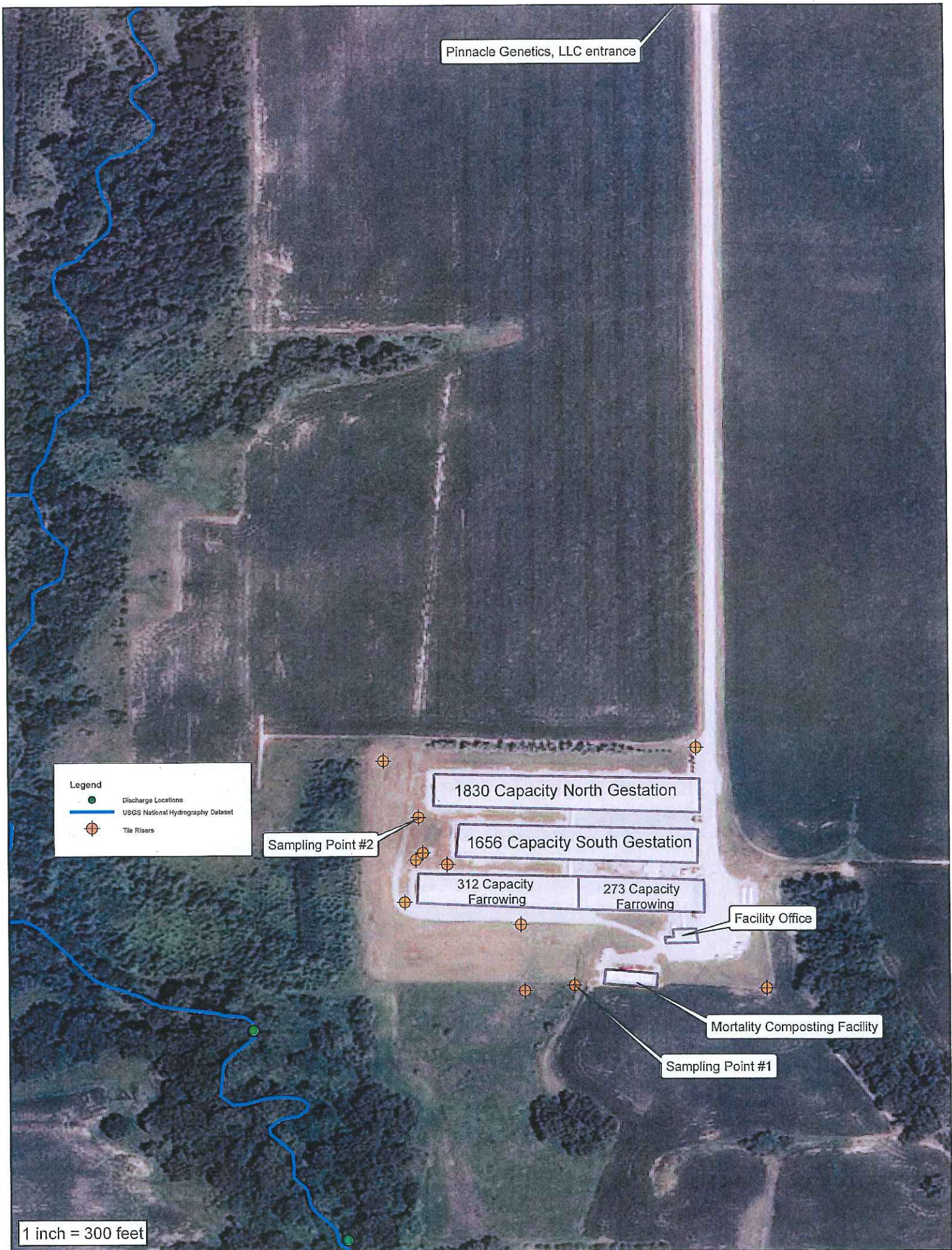
U = Not Detected

The typical limits are for general use waters and this data comes from the Illinois Water Quality Standards (IEPA 2004) unless otherwise noted. There are no Water Quality Standards for Biochemical Oxygen Demand, Total Kjeldahl Nitrogen, Nitrate-Nitrite, and Total Suspended Solids but some limits are provided and are meant to be a benchmark for comparison only.

* Maximum Nitrate-Nitrite amount for aquatic life (North Carolina State University Water Quality Group)

- Ammonia Nitrogen, Total Phosphorus, Nitrate-Nitrite, Dissolved Solids (TDS), Total Suspended Solids (TSS), Total Kjeldahl Nitrogen (TKN), and Biochemical Oxygen Demand (BOD) were analyzed by the Region 5 Chicago Regional Laboratory.

Attachment A



Attachment B

bing Maps

Tennessee, IL

My Notes



On the go? Use m.bing.com to find maps, directions, businesses, and more



● = riser
○ = outlet
— = underground line



Bird's eye view maps can't be printed, so another map view has been substituted.